Ong Ah Hooi v Pentadbir Tanah Larut, Matang dan Selama & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-01(IM)-193–06 OF 2015
ZAWAWI SALLEH, ABDUL RAHMAN SEBLI AND ASMABI MOHAMAD JJCA
19 JANUARY 2017

Civil Procedure — Judicial review — Appeal against — Appellant occupied reserved land and applied for ownership of land from respondents — Respondents rejected appellant's application — High Court dismissed appellant's application for judicial review — Whether there was legitimate expectation that appellant would be given the land — Whether respondents' decision unreasonable, unfair, irrational and arbitrary

Land Law — Application for land — Alienation to competing applicant — Appellant applied for land from respondents — Respondents rejected appellant's application on ground that land given to another applicant who occupied land since 1988 — High Court dismissed appellant's application for judicial review — Whether there was legitimate expectation that appellant would be given the land — Whether respondents' decision unreasonable, unfair, irrational and arbitrary — National Land Code ss 40, 42, 76 & 78

The appellant had been occupying a piece of land known as Lot 151 A4 ('the said land') located in Perak owned by Keretapi Tanah Melayu ('KTM'). The appellant had also entered into an agreement with Perbadanan Aset Keretapi for the said land from 1973 and he had been paying assessment and electricity bills on the said land until 2014. On 5 January 2011, the Chief Minister of Perak announced that the KTM land would be given to the dwellers occupying the KTM reserved land, hence the appellant applied for the ownership of the said land. Nevertheless, the first respondent rejected the appellant's application on the ground that the said land was already given to one Chah bt Ibrahim as the same was occupied by her late husband since 1988. Aggrieved by the first respondent's decision, the appellant filed a judicial review application in the court below. However, the learned judicial commissioner ('JC') dismissed the appellant's application for judicial review and held that the facts that, inter alia, the appellant had been occupying the said land from 1973–2004 did not give rise to legitimate expectation because by virtue of ss 40, 42, 76 and 78 of the National Land Code, the powers to alienate the state land is vested solely in the state authority and the alienation of state land was only complete upon the registration under a register document of title. The present appeal was filed by

the appellant against the decision of the learned JC in dismissing the appellant's application for judicial review. The issues for court's decision were whether there was legitimate expectation that the appellant would be given the said land; and whether the first respondent's decision was unreasonable, unfair, irrational and arbitrary.

Held, allowing the appellant's appeal with costs of RM5,000 subject to allocator; setting aside the decision of the learned JC; and granting the appellant's application for judicial review:

(1) The learned JC was correct in holding that there could not be a legitimate expectation against clear provisions of law. His Lordship's reasons were well supported by settled principles of law and there was no cogent reason for the court to interfere with the finding (see paras 18 & 20).

(2) There was not an iota of evidence to support the assertion of the first respondent that the said land was occupied by Chah bt Ibrahim's late husband since 1988. Such assertion flew in the face of the documentary evidence on record as it was not disputed that the appellant had an agreement with Perbadanan Aset Keretapi for the said land from 1973 and he had been paying assessment and electricity bills on the said land until 2014. In the circumstances, the respondents' decision was so unreasonable that no reasonable decision maker would have come to it. Therefore, it was not a valid exercise of power by the respondents and the decision was liable to be set aside (see paras 33–34).

[Bahasa Malaysia summary

Perayu telah menduduki sebidang tanah yang dikenali sebagai Lot 151 A4 ('tanah tersebut') yang terletak di Perak yang dimilik oleh Keretapi Tanah Melayu ('KTM'). Perayu juga telah memasuki perjanjian dengan Perbadanan Aset Keretapi untuk tanah tersebut dari 1973 dan dia telah membayar taksiran dan bil-bil elektrik atas tanah tersebut sehingga tahun 2014. Pada 5 Januari 2011, Menteri Besar Perak mengumumkan bahawa tanah KTM akan diberikan kepada penghuni-penghuni yang menghuni tanah rezab KTM tersebut, maka perayu memohon bagi milikan tanah tersebut. Walau bagaimanapun, responden pertama menolak permohonan perayu atas alasan bahawa tanah tersebut telah diberikan kepada seorang yang bernama Chah bt Ibrahim kerana ianya dihuni oleh arwah suaminya semenjak tahun 1988. Tidak puas hati dengan keputusan responden pertama, perayu memfailkan permohonan semakan kehakiman di Mahkamah Tinggi. Walau bagaimanapun pesuruhjaya kehakiman yang bijaksana ('PK') menolak permohonan perayu bagi semakan kehakiman dan memutuskan bahawa fakta bahawa, antara lain, perayu telah menghuni tanah tersebut dari tahun 1973–2004 tidak memberikan harapan sah kerana mengikut ss 40, 42, 76 dan 78 Kanun Tanah Negara, kuasa untuk memindahkan tanah negeri adalah diletakhakkan semata-mata kepada pihak berkuasa negeri dan pemindahan

tanah negeri hanya siap setelah didaftarkan di bawah dokumen daftar hak milik. Rayuan ini difailkan oleh perayu terhadap keputusan PK yang bijaksana dalam menolak permohonan perayu untuk semakan kehakiman. Isu untuk keputusan mahkamah adalah sama ada terdapat harapan sah bahawa perayu akan diberikan tanah tersebut; dan sama ada keputusan responden pertama adalah tidak munasabah, tidak adil, tidak rasional dan sewenang-wenangnya.

Diputuskan, membenarkan rayuan perayu dengan kos sebanyak RM5,000 tertakluk kepada alukator; mengetepikan keputusan PK yang bijaksana; dan membenarkan permohonan perayu untuk semakan kehakiman:

(1) PK yang bijaksana adalah betul dalam memutuskan bahawa mungkin tidak terdapat harapan sah terhadap peruntukan undang-undang yang jelas. Alasan Yang Arif adalah disokong dengan betul oleh prinsip-prinsip undang-undang yang ditetapkan dan tidak terdapat alasan kukuh untuk mahkamah campur tangan dengan dapatan (lihat perenggan 18 & 20).

(2) Tidak terdapat sedikitpun keterangan untuk menyokong desakan responden pertama bahawa tanah tersebut telah dihuni oleh arwah suami Chah bt Ibrahim semenjak tahun 1988. Desakan sedemikian adalah dalam keterangan dokumentar dalam rekod kerana ia tidak dipertikaikan abahawa perayu telah membuat perjanjian dengan Perbadanan Aset Keretapi bagi tanah tersebut dari tahun 1973 dan dia telah membayar taksiran dan bil-bil elektrik atas tanah tersebut sehingga 2014. Dalam keadaan, keputusan responden-responden adalah tidak munasabah bahawa tiada pembuat keputusan yang munasabah akan mencapai kepadanya. Oleh itu, ia bukan pelaksanaan kuasa yang sah oleh responden-responden dan keputusan adalah boleh diketepikan (lihat perenggan 33–34).]

Notes

For a case on alienation to competing applicant, see 8(2) *Mallal's Digest* (5th Ed, 2015) para 2670.

For cases on appeal against judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2015) paras 5572–5574.

Cases referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 All ER 680; [1948] 1 KB 223, CA (refd)

Attorney-General (NSW) v Quin (1990) 93 ALR 1; [1990] 170 CLR 1, HC (refd)

City of Botany Bay Council v Minister for Transport and Regional Development and Others [1999] 58 ALD 628, FC (folld)

Datuk Justine Jinggut v Pendaftar Pertubuhan [2012] 3 MLJ 212, CA (refd)

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417, SC (refd)

Kabra Holdings Sdn Bhd v Ahmed Shah Lan & Others & Other Persons Unknown [1992] 2 CLJ 817, HC (refd)
Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor [1998] 1 MLJ 305, CA (refd)
Minister for Immigration and Ethnic Affairs v Wu Shan Liang and Others (1996) 41 ALD 1; [1996] 185 CLR 259, HC (refd)
North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor [2010] MLJU 413; [2010] MLJU 1988, CA (refd)
Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah & Galian Selangor & Anor [2014] 7 MLJ 526, HC (refd)
R Ramachandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)
Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)
Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors [1982] 1 MLJ 313, FC (refd)
Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors [2014] 4 MLJ 765; [2014] 8 CLJ 629, FC (refd)

Legislation referred to

National Land Code ss 40, 42, 76, 78

Appeal from: Application For Judicial Review No 16A-27 of 2014 (High Court, Taiping)

Yokinee Selvam (Yokinee Selvam) for the appellant.
Suhaila bt Haron (State Legal Advisor, State Legal Advisor Office Perak) for the respondents.

Zawawi Salleh JCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant from an order of the learned judicial commissioner ('JC') of the Taiping High Court dated 19 May 2015, dismissing the appellant's application for judicial review of the decision of the first respondent dated 16 April 2014 to reject the appellant's application for a piece of land known as Lot No 151 A4 ('Tanah Bebas Landasan Keretapi Kuala Sepetang') ('the impugned decision').

[2] Having carefully considered the submissions of both parties and reviewed the evidence before us, we allowed the appeal. We now give the detailed reasons for our decision.

FACTS OF THE CASE

[3] The facts and circumstances giving rise to this appeal may be shortly stated as follows:

(a) the genesis of the disputes may be traced back to the event which occurred in 1 August 1979, when the appellant applied to Keretapi Tanah Melayu ('KTM') to occupy a piece of land known as lot No 151 A4 ('Tanah Bekas Landasan Keretapi Kuala Sepetang'). KTM agreed to let the said piece of land to the appellant. An agreement was signed and rental up to RM230.40 was paid;

(b) on 29 September 1973, the applicant's application to build a building on the said piece of land was approved by Majlis Tempatan Port Weld (renamed as Majlis Perbandaran Taiping since 1 September 1979). Later, the applicant built on the said land a building to dry fish;

(c) the applicant paid assessment and electricity bills to Majlis Bandaran Taiping until 2014. The applicant averred that he was still staying on the said lot until 2014;

(d) on 5 January 2011, the Menteri Besar of Perak announced that the KTM land would be given to those dwellers occupying the KTM reserve land. On 18 October 2011, the applicant wrote a letter to the Menteri Besar of Perak complaining that his name was not in the list prepared by Pejabat Tanah Larut Matang dan Selama ('the first respondent');

(e) on 15 May 2012, the appellant appealed to Penasihat Hal Ehwal Kaum China, one Dato' Chang Ko Youn, about his problem. Dato' Chang Ko Youn in turn wrote a letter to the first respondent;

(f) on 25 May 2013, the appellant approached one Datuk Hj Abd Mukti bin Hj Abd Rahim. Datuk Hj Abd Mukti later wrote a letter to Pengarah Tanah dan Galian Negeri Perak ('PTG') ('the second respondent') about the appellant's case;

(g) on 27 June 2013, the second respondent informed Datuk Hj Abd Mukti bin Hj Abd Rahim that the appellant's application was approved;

(h) however, on 16 April 2014, the first respondent informed the appellant that his application was rejected. By a letter dated 16 May 2014, the first respondent explained to the second respondent ('PTG') that the lot applied by the appellant was already given to one Chah bt Ibrahim because the said lot was occupied by her late husband since 1988; and

(i) the appellant, being dissatisfied with the decision of the first respondent, had filed an application for judicial review, seeking an order of certiorari to quash the impugned decision. As stated earlier, the learned JC dismissed the appellant application with costs. Hence, this appeal.

A FINDINGS OF THE HIGH COURT

[4] The learned JC's reasoning in dismissing the appellant's application for judicial review can be summarised as follows:

B (a) the facts that:

(i) there was in existence a rental agreement between the appellant and KTM for which KTM agreed to let the appellant to occupy the said land;

C (ii) Majlis Tempatan Port Weld had approved the appellant's application to erect a building on the said land;

(iii) the appellant had been paying assessment and electricity bills until now;

D (iv) the appellant had been occupying the said lot from 1973–2014; and

(v) the announcement of the Menteri Besar Perak that the documents of title for KTM land in Port Weld would be given to those who are occupying the KTM reserve land between Taiping and Kuala Sepetang,

E did not given rise to a legitimate expectation because by virtue of ss 40, 42, 76 and 78 of the National Land Code, the powers to alienate the state land is vested solely in the state authority and the alienation of state land is only complete upon the registration under a register document of title. Further, until such registration is effected, the land remains state land. Reliance was placed on the following cases:

F *Sidek bin Haji Mohamad & 461 Yang Lain v The Government of the State of Perak & Ors* [1982] 1 MLJ 313;

G *Kabra Holdings Sdn Bhd v Ahmed Shah Lan & Others & Other Persons Unknown* [1992] 2 CLJ 817;

North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor [2010] MLJU 413; [2010] MLJU 1988; and

Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah & Galian Selangor & Anor [2014] 7 MLJ 526;

H (b) the reasons proffered by the first respondent in rejecting the appellant's application for the said land as contained in the letter dated 16 April 2014 were not unreasonable, unfair or irrational. The court is not entitled on an application for judicial review to consider whether the

I decision itself, on the merits of the facts, was fair and reasonable. Reliance was placed on the decisions in *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417and *Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor* [1998] 1 MLJ 305.

THE APPEAL

[5] Before us, the issues for determination as formulated by learned counsel for the appellant are as follows:

(a) whether there was legitimate expectation that the appellant would be given the lot he is staying until 2014; and

(b) whether the first respondent's decision dated 16 April 2014 was unreasonable, unfair, irrational and arbitrary.

OUR DECISION

The scope of judicial review powers

[6] The issue on the correct approach to be adopted by the court in judicial review proceedings was canvassed at considerable length in the written submission filed by learned assistant legal advisor appearing for the respondents. He submitted that it is an elementary principle of administrative law that a court undertaking judicial review of an administrative decision is concerned only with the legality of the decision and not with its merits. Reliance was placed on the decision in *Harpers Trading (M) Sdn Bhd* where the Supreme Court stated:

> It seems to us that it should be treated as trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable.

[7] Learned assistant state legal advisor emphasised that there is a long-established and fundamental distinction between appeal and review. In judicial review, the reviewing court cannot set aside a decision merely because it believes that the decision was wrong on the merits. A court of review is concerned only with the lawfulness of the process by which the decision was arrived at, and can set it aside only if that process was flawed in certain defined and limited respects. By contrast, a court of appeal makes a finding on the merits of the case before it; if it decides that the decision of the lower court or tribunal was wrong, then it sets that decision aside and hands down what it believes to be the correct decision.

[8] He urged this court not to trespass into the forbidden field of review of the merits. It is important to maintain the distinction between the legality and the merits of decision-making. The separation between judicial and executive power marks out the respective functions of the courts and the administration.

For a court to go beyond its supervisory role of examining the legality of the exercise of administrative powers would be contrary to this fundamental concept.

[9] Learned assistant state legal advisor further argued that behind the theory of the separation of powers lies more practical reason for delimiting the proper role of the courts. An administrative decision-maker will often be required to take account of interest extending beyond those of the person directly affected by the decision. This is a task for which the executive branch is well-suited, and in relation to which it is ultimately accountable to the Parliament or State Legislative Assembly, as the case may be. The courts, on other hand, are not well-placed to consider and resolve the broader issues of administrative policy which are often central to the exercise of an administrative discretion (see *Attorney-General (NSW) v Quin* (1990) 93 ALR 1; [1990] 170 CLR 1 at p 37 per Brennan J; *Minister for Immigration and Ethnic Affairs v Wu Shan Liang and Others* (1996) 41 ALD 1; [1996] 185 CLR 259 at p 292 per Kirby J).

[10] In our view, the law on judicial review has developed over the years. In *R Ramachandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145, the Federal Court revisited this area of law and laid down crucial new principles to bring our law into harmony with the development in administrative law. The Federal Court stated at pp 186–187:

> It is often said that judicial review is concerned not with the decision but the decision making process. (See eg *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.
>
> But Lord Diplock's other grounds for impugning a decision susceptible to judicial review make it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, *this permits the courts to scrutinize such decisions not only for process, but also the substance*. (Emphasis added.)

[11] The law was clearly explained and clarified by Raus Sharif FCJ (now PCA) in the Federal Court case of *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629 where His Lordship said:

> Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of

> administrative law. *Rama Chandran* is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.

[12] In *Datuk Justine Jinggut v Pendaftar Pertubuhan* [2012] 3 MLJ 212, this court reaffirmed the application of the *Ramachandran* principle in the following terms (at para 56):

> The court has the power to scrutinise the authority's decision not only for process, but also for substance (*R Ramachandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147).

[13] In the case of *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors* [2014] 4 MLJ 765; [2014] 8 CLJ 629, the Federal Court held that the current position of the law on judicial review in Malaysia permits a review of process and substance in determining the reasonableness of a decision by an administrative body and the test applicable in judicial review now is the objective test.

[14] We hasten to add that the court is permitted to review the decision on the basis of a material mistake of fact on the part of the person who made the decision or where the decision was arrived at arbitrarily, capriciously or mala fide or as a result of unwarranted adherence to a fixed principle or in order to further an ulterior or improper process, or where the functionary misconceived the nature of the discretion conferred upon him or her and took into account irrelevant considerations or ignored relevant ones; or where the decision of the functionary was so grossly unreasonable as to warrant the inference that he or she had failed to apply his or her mind to the matter.

[15] Bearing the above principles in mind, we now proceed to consider the issues raised by the appellant.

Issue (a)

[16] Learned counsel for the appellant submitted that the appellant was not a squatter. The material on record showed that the appellant has been staying on the said lot from 1973–2014 as a tenant and when KTM surrendered the land to the state government, Menteri Besar Perak announced that the KTM land would be given to the occupier. The second respondent's letter dated 27 June 2013 informed the appellant that his application for the said lot was allowed. Further, the appellant was paying assessment and electricity bills for the said lot until 2014.

[17] Learned counsel for appellant vehemently argued that the representations and amenities provided by the local government did give rise to legitimate expectation that the appellant would be given the lots he is staying until now.

[18] With respect, it seems to us that this submission is a complete non-starter. In our view, the learned JC was correct in holding that there cannot be a legitimate expectation against clear provisions of law. There is a plethora of authorities in support of this proposition. In *North East Plantations Sdn Bhd* Abu Samah JCA (as he then was), delivering the majority judgment of the Court of Appeal, held:

> In our judgment, legitimate expectation cannot override the express statutory provisions of the Code.

[19] The learned JC set out the reasoning for his conclusion at para [30] of *penghakiman* (pp 17–18 of *rekod rayuan tambahan*) as follows:

> [30] Kuasa pemberian tanah Negeri adalah tertakluk kepada peruntukan di bawah ss 40, 42, 76 dan 78 KTN 1965. Seperti yang dijelaskan sebelum ini, kerajaan negeri mempunyai kuasa mutlak terhadap pemberian tanah di bawah s 40 KTN 1965. Mahkamah Persekutuan telah di dalam kes *North East Plantations Sdn Bhd v Pentadbiran Tanah Daerah Dungun & Anor* [1990] 1 MLJ 351, dengan jelas menyatakan kuasa pemberian tanah adalah hak mutlak kerajaan negeri, dan tidak boleh dipertikaikan; lihat juga *Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian Selangor & Anor* [2014] 7 MLJ 526. Mahkamah Persekutuan juga telah menekankan, bahawa jangkaan sah tidak boleh mengatasi suatu kuasa berkanun jelas, yang telah diperuntukkan di bawah undang-undang, dan diberikan kepada kerajaan negeri. Mahkamah Persekutuan di dalam kes tersebut, telah selanjutnya menyatakan seperti berikut:
>
> > (4) Dengan hanya permohonan perayu untuk mendapatkan tanah telah diluluskan ianya tidak bermakna Kerajaan Negeri telah terikat secara kontraktual hingga menyebabkannya tidak boleh lagi membuat keputusan untuk membatalkan kelulusan yang telah diberikan. Mengikut Perlembagaan Persekutuan (Jadual 9) dan di bawah s 40 KTN 'tanah' adalah kepunyaan Negeri dan sebagai pemilik tanah ia berhak membuat apa-apa keputusan atau mengambil apa-apa tindakan yang difikirkan wajar dan munasabah. Sama ada tindakan membatalkan sesuatu kelulusan itu wajar merupakan isu yang berasingan dan tidak boleh menidakkan hak Kerajaan Negeri sebagai pemilik tanah.
> >
> > (5) Perayu tidak mempunyai sebarang hak di sisi undang-undang termasuklah hak 'beneficial' terhadap lapan lot tersebut walaupun kelulusan telah diberikan MMKN terdahulu. Perayu hanya akan memperolehi haknya keatas lapan lot tersebut sekiranya tanah-tanah tersebut telah didaftarkan ke atas namanya. Selagi pendaftaran tidak dilaksanakan tanah-tanah tersebut masih kepunyaan Kerajaan Negeri dan ia berhak melakukan apa-apa urusan termasuk memberi milikan kepada pihak lain.

[20] We are in full agreement, as we must, with the reasons proffered by the learned JC. His Lordship's reasons are well supported by settled principles of law and there is no cogent reason for us to interfere with the finding.

[21] In the light of the foregoing, the first issue must, therefore, be answered in the negative.

Issue (b)

[22] Learned counsel for the appellant submitted that the first respondent's decision dated 10 April 2014 was unreasonable, unfair, irrational and arbitrary. Further, the reasons given by the first respondent in rejecting the appellant's application as contained in their letter dated 6 July 2012 to Dato' Chang Ko Youn was predicated on unsupported evidence and/or the first respondent had failed to take into account certain relevant evidence.

[23] For ease of reference, we reproduce hereunder the letter dated 6 July 2012 issued by the first respondent to Dato' Chang Ko Youn:

Pejabat Daerah dan Tanah

Larut, Matang dan Selama

34000 Taiping

Perak Darul Ridzuan.

Ruj. Tuan: CKY/48-49/ss

Ruj. Kami: Bil. (36) dlm. PTLM 1/1/98

Tarikh: 6.7.2012

Penasihat Hal Ehwal Kaum Cina

Kepada Y.A.B. Menteri Besar Perak

Aras 1, Bangunan Perak Darul Ridzuan

Jalan Istana, 30000 IPOH

PERAK DARUL RIDZUAN

YBhg. Dato'

BORANG 5A UNTUK TANAH RIZAB KTM KUALA SEPETANG (BEH KEE THONG DAN ONG AH HOOI @ ONG HOON HOOI)

Dengan segala hormatnya saya merujuk kepada perkara di atas.

2. Pihak pentadbiran ini merujuk kepada surat dari pihak tuan berhubung dengan perkara di atas.

3. Semakan mendapati kedua-dua permohonan tidak dapat dipertimbangkan dengan alasan seperti berikut:-

I) ...

II) En Ong Ah Hooi @ Ong Hoon Hooi

Di atas tapak terdapat stor yang telah lama ditinggalkan dan sekarang dijadikan tempat-tempat menjemur ikan. Tapak juga dipohon oleh pemohon lain yang mendakwa bekas pemilik lesen TOL atas tanah tersebut. Kedua-dua pemohon tidak pertimbangkan untuk diberikan hakmilik atas tapak tersebut.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

t.t.

(*HJ MD SHAFIE BIN HJ MUDA, PPT*)

Ketua Penolong Pegawai Daerah (T)

b.p Pentadbir Tanah

Larut Matang dan Selama

s.k. Beh Kee Thong

150AA, Jalan Tepi Sungai

34650 Kuala Sepetang

Ong Ah Hoi @ Ong Hoon Hooi

No. 29, Jalan Trump

34650 Kuala Sepetang.

[24] In a nutshell, the reasons proffered by the first respondent are predicated on the following facts:

(a) there was an abandoned store on the said lot;

(b) it has become a place to dry fish; and

(c) the said lot had been applied for by a person who claimed that he was occupying the said lot with TOL licence.

[25] In reply, learned assistant state legal advisor submitted that findings of fact are the domain of the decision making authority (the first respondent in this instant appeal). Its findings are in general exempt from review by the courts.

[26] With respect, we disagree. In our view, where the facts do not support the conclusion arrived at by the decision making authority, or where the findings of the decision making authority had been arrived by taking into consideration irrelevant matters or had failed to consider relevant matters, such findings are always amenable to judicial review on the ground often referred to as '*Wednesbury* unreasonableness'. This ground rests on the premise that where a discretionary power is statutorily conferred on a repository, the power must be exercised reasonably. 'Unreasonableness' is a conclusion which may be applied to a decision which lacks evidence and intelligible justification.

[27] It was Lord Greene MR who firmly introduced the concept of unreasonableness as a ground of review in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All ER 680; [1948] 1 KB 223. It was in this case that a regulation preventing the admission of any child under the age of 15 into the local picture house was castigated as unreasonable. In arriving at his conclusion, Lord Greene presented unreasonableness as having two meanings. The first was merely as a general rubric containing the other grounds of review, such as relevancy and impropriety of purpose. However, it is evident from his proposition that 'if a decision on a competent matter is so unreasonable that no reasonable authority could ever come to it then the court can interfere', that he envisaged a second meaning of unreasonableness, that is, as an independent substantive ground of review.

[28] It must be noted, however, that as a substantive ground of review, 'unreasonableness' would have only very limited application. It was intended only as a safety net to catch those decisions that were manifestly absurd but may escape review on any of the more specific grounds of attack. The intention was not to capture administrative decisions regarded as 'less reasonable' than those which the reviewer might have made.

[29] In this regard, we agree with the observation of the Federal Court of Australia in the case of *City of Botany Bay Council v Minister for Transport and Regional Development and Others* [1999] 58 ALD 628, at p 637, where the court stated:

> We must again stress the limited nature of judicial review on the ground of unreasonableness. That ground is not available as a vehicle to obtain the judgment of the court on matters that in the end are not concerned with the legality of a decision but with contested views about its wisdom or substantive fairness - judgments about matters of that nature are to be made elsewhere by the community and its political representatives; the concern of the court is only with the legality of decisions.

[30] We have scrutinised the material on record and we agree with the submission of learned counsel for the appellant that the decision of the first

respondent was unreasonable and predicated on unsupported evidence. The decision was not in accordance with law and bespoke error. The material on record revealed that:

(a) the said lot was never abandoned by the appellant;

(b) the appellant occupied the said lot from 1973–2014; and

(c) no one could have received a TOL licence of the said land because KTM owned the said land at the material time.

[31] We are also of the opinion that the reasons proffered by the first respondent to the Menteri Besar as contained in his letter dated 16 April 2014 were unreasonable and not supported by the evidence on record.

[32] For ease of reference, we reproduce the letter hereunder:

Pejabat Daerah dan Tanah

Larut, Matang dan Selama

34000 Taiping

Perak Darul Ridzuan.

Ruj. Tuan: Bil.(17) dlm.PMB Pk 1337/6 Jld.6

Ruj. Kami: Bil. (16) dlm. PTLM 353/101/2007/05

Tarikh: 16 Jun 2014

Pejabat YAB Menteri Besar Perak

Aras 2, Bangunan Perak Darul Ridzuan

Jalan Panglima Bukit Gantang Wahab

30000 IPOH

PERAK DARUL RIDZUAN

Tuan,

RAYUAN PERMOHONAN TANAH RIZAB KTMB KUALA SEPETANG NO. 151-A4 OLEH PEMOHON: ONG AH HOOI @ ONG HOON HOOI

Dengan hormatnya saya mempersilakan tuan merujuk kepada perkara di atas.

2. Dimaklumkan, tapak yang dipohon oleh pemohon ini iaitu PT 1451 (Tapak No. 151-A4) telahpun diluluskan kepada seorang peserta iaitu Chah binti Ibrahim melalui Mesyuarat JKPTD Bil. 8/2012 bertarikh 1.11.2012 dengan alasan tapak tersebut dahulu telah disewa oleh allahyarham suami Chah binti Ibrahim dengan Perbadanan Aset Keretapi dan diusahakan sejak tahun 1988.

3. Di atas tapak tersebut sebelum ini dijadikan tempat longgokan saki baki bahan binaan dan bahan terbuang oleh pemohon ini sebagai ugutan agar pemilik asal

Chah binti Ibrahim mengosongkan tapak tersebut. Tapak ini terletak berhadapan dengan tapak gerai makan yang diusahakan oleh anak pemohon.

4. Pemohon telah beberapa kali hadir di Pejabat Tanah Daerah Larut dan Matang semasa Hari Bertemu Pelanggan untuk bertemu Pentadbir Tanah bagi membincangkan permohonan beliau.

5. Namun, mengikut bukti-bukti yang telah dikemukakan di dalam Mesyuarat JKPTD telah meyakinkan Ahli-Ahli Mesyuarat JKPTD untuk memperakukan permohonan oleh Ong Ah Hooi @ Ong Hoon Hooi adalah ditolak.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

t.t.

(*MARLIA BINTI MOHD BELIA*)

Penolong Pegawai Daerah (Tanah)

b.p Pentadbir Tanah

Larut Matang dan Selama

s.k. Ong Ah Hoi @ Ong Hoon Hooi

No. 29, Jalan Trump

34650 Kuala Sepetang.

[33] In our view, there is not an iota of evidence to support the assertion of the first respondent that the said lot was occupied by Chah bt Ibrahim's late husband since 1988. Such assertion, with respect, flies in the face of the documentary evidence on record. It is not disputed that the appellant had an agreement with Perbadanan Aset Keretapi for the said lot from 1973 and he had been paying assessment and electricity bills on the said lot until 2014.

[34] We are of the considered opinion that in the circumstances surrounding this appeal, the respondents' decision is so unreasonable that no reasonable decision-maker would have come to it. Therefore, it was not a valid exercise of power by the respondents and the decision is liable to be set aside.

[35] For the reasons as stated above, we unanimously allowed the appellant's appeal with costs of RM5,000 subject to allocator and the decision of the learned JC was set aside. We granted the appellant's application for judicial review in terms of prayers 1, 2, 3 and 4 in the application for judicial review. We so ordered.

Appeal allowed with costs of RM5,000 subject to allocator; decision of learned JC set aside; appellant's application for judicial review granted.

Reported by Dzulqarnain Ab Fatar